* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on February 27, 2007
% Date of decision: March 30, 2007

\+ WP(C) 17213/2006 & CM No. 14125/2006

\# VAIBHAV KANSAL ..... PETITIONER
! Through: Mr. Sunil Malhotra, Advocate

Versus

$ BSES RAJDHANI POWER LIMITED ..... RESPONDENT
^ Through: Mr. Arun Monga with Ms. S.Jain, Advocate

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1, Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

Dr. S.Muralidhar, J.

1. The petitioner challenges the validity of the letter dated 18/20.7.2006 issued by the respondent calling upon him to liquidate the outstanding dues in respect of the premises for which the petitioner had applied for the sanction of 95 KW electricity connection.

2. The respondent informed the petitioner that during the inspection it was found that the premises at K-87, Udyog Nagar, Rohtak Road, New Delhi is "a unified premises" and that "no additional load would be sanctioned subject to the completion of commercial formalities and clearance of dues" (page 47).

3. According to the petitioner, he took on rent/lease the rear portion of the industrial shed located at K-87, Udyog Nagar, Rohtak Road, New Delhi for a period of five years, commencing from 1.6.2006 as per the Rent Agreement dated 5.6.2006. The petitioner claims to have purchased the required machinery for the purpose of setting up an industrial unit. He claims to have made an application on 5.6.2006 for grant of a new electricity connection for the rear portion. He states that the premises were inspected on 5.6.2006 by the respondent following which on 12.6.2006 the petitioner submitted the relevant documents and the fee.

4. It is claimed that the respondent was under obligation to supply the electricity connection since no defect was pointed out nor was any information was sought. He approached the respondent on several occasions only to be told that the matter was still under consideration. Ultimately, he received the impugned letter dated 18/20.7.2006.

5. What, according to the petitioner, he did, after receiving the impugned letter, is stated in paras 12 to 15 of the writ petition which read as under:

> "12. That in these circumstances the petitioner contacted the landlady to enquire as to whether any other person has been in use of the said premises that is given on rent to the petitioner,

but it was categorically stated that the said portion is a separate and distinct portion, which has not been given on lease/rent to any person at any point of time and the petitioner is the first occupant of the said portion. The landlady of the property also specifically denied that any amount is due or payable against any connection provided at the said premises.

13. That the petitioner thereafter approached the other occupant of a portion of the said property, i.e. Bharat Propak Pvt. Limited and it was informed to the petitioner that the connection granted to them is having K.No. NA50111257851. It was further informed that the said Bharat Propak Pvt. Limited paid the bills as raised by the respondent from time to time, however, there was a dispute with regard to a demand raised by the respondent for Rs.20,45,112/- in respect of K.No. NA5011257851 and the matter is sub-judice before the Hon'ble High Court of Delhi, in CS(OS) No 1129 of 2006 and the said demand has been stayed by the Hon'ble High Court.

14. That it is, however, came to the knowledge of the petitioner that the respondent has been referring the connection granted to the said Bharat Propack Pvt. Limited installed at the said property no. K-87, Udyog Nagar, Nangloi, Delhi with the reference bearing No. 2220/5000/1952. The petitioner further states that the respondent has been supplying electricity to the said Bharat Propack Pvt. Limited.

15. That, therefore, the petitioner approached the respondent asking for a copy of the alleged bill as well as enquiring about how the customer, in whose name the connection was granted was continuing to receive electricity supply, while the respondent is wrongly refusing electricity connection, but despite visiting the officials of the respondent on a number of occasion, they neither provided any copy of the alleged bill nor furnished any reply."

6. The petitioner contends that there was no justification for the respondent to require the petitioner to clear the dues owed to the respondent by M/s. Bharat Propack Pvt. Limited since the petitioner's premises were different and what was being sought for by him was a new electricity connection.

7. In reply it is pointed out by the respondent that the petitioner's father is in fact the Director of M/s. Bharat Propack Pvt. Limited that the said company had already filed a Civil Suit (OS) No 1129 of 2006 against the respondent herein disputing its liability to pay a sum of Rs.20,75,111/-. It is stated that the said suit is still pending in this Court. It is pointed out that in para 2 of the plaint it is stated that the property in question had been purchased by Smt. Promila Kansal wife of Shri Anil Kansal and the mother of the petitioner herein on 3.11.2003 and ever since the company has been running its manufacturing unit in the premises. It is further stated that even in the present writ petition, these facts have been concealed. In particular it is not contended that any portion of the premises was not in the occupation of Bharat Propack Pvt. Limited. It is accordingly submitted that the petitioner is weaving a false story of a sham tenancy between himself and his own mother in respect of the same property for the purpose of getting a new electricity connection. Relying on the

decision of the Division Bench of this Court in ***Madhu Garg v. North Delhi Power Limited*** 129 (2006) DLT 213 (DB), it is pointed out that the petitioner would have to clear the past dues in respect of the premises in question if a new electricity connection had to be granted to him.

8. The rejoinder filed by the petitioner does not deny the pendency of the suit or the relationship between the parties. The petitioner claims that he has nothing to do with M/s. Bharat Propack Pvt. Limited. He claims that the said company is in the occupation of only one portion of the said property.

9. The preliminary objection of the respondent that the petitioner has willingly suppressed material facts in this writ petition merits acceptance. It is indeed strange that the petitioner has completely suppressed the fact that the Director of M/s. Bharat Propack Pvt. Limited is none other than his father and that the "landlady" whom he refers to in para 12 is his own mother. Obviously, the story about lease being only for the rear portion of the premises, which has not been earmarked even in the Rent Agreement between the petitioner and his mother appears to have been introduced only to justify that the demand for a new electricity connection. It is impossible to believe that the

petitioner was not aware of the pendency of the suit in this Court instituted by M/s. Bharat Propack Pvt. Limited in respect of the electricity dues in relation to the premises particularly when the Director of the said company is none other than his father.

10. The rejoinder filed by the petitioner while not denying his relationship with the "landlady" or the Director of the said company or the pendency of the suit in this Court, does not inspire confidence that the petitioner has approached this Court with clean hands and that he is a bonafide litigant. The Court is also inclined, in these circumstances, to accept the submission of the respondent that the past electricity dues in respect of the premises in question have to first be cleared before the demand for a new electricity connection can be considered.

11. The petition is accordingly dismissed not only on the ground of willful suppression of material facts but also on merits. The petitioner is directed to pay a sum of Rs.10,000/- as costs to the respondent within a period of four weeks from today.

11. The writ petition and the pending application are, accordingly, dismissed with costs as directed herein above.

Sd/-

March 30, 2007 S.MURALIDHAR, J
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